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Attorney for Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

IRASARI LAZAZZARO,

Plaintiff,

vs.

MARRIOTT INTERNATIONAL, INC., a
Delaware Corporation, dba JW Marriot Las
Vegas Resort & Spa,

Defendant.

CASE NO.

COMPLAINT FOR DAMAGES AND OTHER
RELIEF BASED UPON:

DISABILITY DISCRIMINATION,
FAILURE TO ACCOMMODATE AND
RETAILIATION IN VIOLATION OF THE
AMERICANS WITH DISABILITIES ACT

JURY DEMAND

Plaintiff IRASARI LAZAZZARO ("Plaintiff" or "Lazazzaro") alleges as follows:

1. This action is brought pursuant to the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, *et seq.* (hereinafter "ADA"). Jurisdiction is predicated under this code section as well as 28 U.S.C. § 1331 as this action involves a federal question.

2. At all relevant times, Defendant MARRIOTT INTERNATIONAL, INC., a Delaware Corporation, dba JW Marriott Las Vegas Resort & Spa (hereinafter the "Marriott" or "Defendant") employed twenty (20) or more employees for each working day during each of 20 or

1 more calendar workweeks in the current or preceding calendar year, and they are therefore subject
2 to the provisions of the ADA.

3 3. The events or omissions giving rise to Plaintiff's claim occurred in this judicial
4 district, thus venue is proper here pursuant to 28 *USC §1391(b)(2)*, and the ends of justice so
5 require.

6 **PARTIES**

7 4. Plaintiff, Lazazzaro, is a citizen of the United States and a resident of the State of
8 Nevada, County of Clark and City of Las Vegas.

9 5. Plaintiff is informed and believes and thereon alleges that at all relevant times
10 giving rise to the claims asserted, Plaintiff was employed in Las Vegas, Nevada by the Marriott.
11 Defendant is an employer within the meaning of 42 *USC §12111(5)(A)*.

12 **EXHAUSTION OF REMEDIES**

13 6. Plaintiff timely filed a "Charge of Discrimination" with the Equal Employment
14 Opportunity Commission ("EEOC") and was issued a Notice of Right to Sue by the EEOC on
15 December 6, 2016, a copy of which is attached to Complaint as Exhibit "A".

16 **STATEMENT OF FACTS**

17 7. In April 2012 Plaintiff was hired by Defendant as a Pantry Cook. Prior to that time
18 she had been employed since July 2007 with Rampart Casino in the same position (which is
19 located in the JW Marriot Las Vegas Resort & Spa).

20 8. On February 27, 2015 Lazazzaro was required to have bone fusion surgery on her
21 right foot to remove part of the bone. This surgery was required to relieve the pain Plaintiff was
22 experiencing from constantly being on her feet at work while performing her job as a Pantry Cook.

23 9. After the surgery Plaintiff was put in a walking boot and told to stay off of her feet
24 for three months while her foot healed.

25 10. In order to accommodate the time Lazazzaro needed off from work for her foot to
26 properly heal, Plaintiff requested and was approved for Family Medical Leave ("FML") on
27
28

1 February 24, 2015.

2 11. On the FML paperwork her doctor completed on February 23, 2015 he estimated
3 that Plaintiff would be unable to work from February 27, 2013 to May 27, 2015.

4 12. During the time she was off Lazazzaro called into the human resources department
5 at Marriott about every three week to tell them about the progress of her recovery as was needed to
6 continue to receive disability income for her time off.

7 13. During these calls Defendant never asked when she was going to come back to
8 work so Plaintiff assumed that Marriott expected Lazazzaro back to work on May 27, 2015 as was
9 indicated by her doctor in the FML paperwork.

10 14. Then about a week before she was released to go back to work Plaintiff called
11 Marriott and asked what her schedule would be when she came back to work on May 27, 2015.

12 15. During the phone call she was told her employment was terminated effective May
13 18, 2015 because her FML had been exhausted and she did not contact Defendant as to when she
14 would return to work. This was memorialized in a letter to Lazazzaro dated May 21, 2015.

15
16 **CAUSE OF ACTION**

17 **(For Disability Discrimination and Failure to**

18 **Accommodate in Violation of the ADA)**

19 16. Plaintiff Lazazzaro incorporates the allegations set forth in paragraphs 1 through 15,
20 inclusive, as if fully set forth herein.

21 17. As set forth hereinabove, On February 27, 2015 Lazazzaro was required to have
22 bone fusion surgery on her right foot to remove part of the bone. This surgery was required to
23 relieve the pain Plaintiff was experiencing from constantly being on her feet at work while
24 performing her job as a Pantry Cook.

25 18. This physical impairment substantially limited her in the major life activities of
26 standing, walking, squatting, climbing, lifting, sleeping and working, among other major life
27 activities, and thus qualified Lazazzaro as disabled under the ADA.
28

1 19. Once Marriott determined Plaintiff was disabled under the ADA, they had a
2 mandatory duty under the law to interact with Lazazzaro to find a reasonable accommodation.

3 20. Since it was determined by Plaintiff's doctor that she would not be able to return to
4 her job until May 27, 2015 in order to give her right foot time to fully heal, Defendant had a duty
5 under the law to extend Lazazzaro medical leave of absence [past what was allowed under the
6 Family Medical Leave Act ("FMLA")] until she was able to return to her job unless it would result
7 in an indefinite leave of absence or it would cause an undue hardship to Defendant.

8 21. Here there are not facts which would even remotely support that a short extension
9 to Plaintiff's medical leave of absence would result in an indefinite leave of absence or cause an
10 undue hardship to Marriott

11 22. As the facts above indicate Marriott decided to terminate Plaintiff's employment
12 effective on May 18, 2015, just nine days before she was released back to work, full duty.

13 23. All Defendant had to do was interact with Lazazzaro by calling, emailing her,
14 writing her, etc. to see why she did not return on May 15, 2015 like they thought she was going to.
15 The duty to interact with an employee is mandatory under the ADA.

16 24. As indicated above the FML paperwork her doctor completed on February 23, 2015
17 estimated that Plaintiff would be unable to work from February 27, 2013 to May 27, 2015.

18 25. Further as indicated above, Plaintiff called into the human resources department
19 about every three week to tell Marriott about the progress of her recovery.

20 26. Thus there is absolutely no reason for Defendant to have terminated Lazazzaro's
21 employment effective May 18, 2015 for having exhausted her FML and not letting Marriott know
22 about her status. The law is clear that an employer must look to the ADA in situations where an
23 employee has exhausted their medical leave under the FMLA.

24 27. Thus because Marriott chose not to follow the existing law and instead chose to
25 terminate Plaintiff's employment effective May 18, 2015, they are liable to Plaintiff for damages
26 under the ADA.
27
28

1 4. For compensatory damages for mental and emotional distress, worry, indignity,
2 mental anxiety, mortification, depression, shame, grief, inconvenience and loss of enjoyment of life
3 and other pecuniary losses, all to Plaintiff's damage in a sum to be shown at the time of trial;

4 5. For punitive damages;

5 6. For attorney's fees and costs in an amount determined by the court to be reasonable;

6 7. For pre-judgment interest on all damages; and

7 8. For any other and further relief that the Court considers proper.

8 **DEMAND FOR JURY TRIAL**

9 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a trial by
10 jury in this action.

11
12 DATED: 3/3/2017

LAW OFFICES OF MICHAEL P. BALABAN

13
14
15 BY: /s/ Michael P. Balaban

Michael P. Balaban

LAW OFFICES OF MICHAEL P. BALABAN

10726 Del Rudini Street

Las Vegas, NV 89141

EXHIBIT

“A”

NOTICE OF RIGHT TO SUE

DISMISSAL AND NOTICE OF RIGHTS

To: **Irasari E. Lazarraro**
5020 Elkin Creek Ave.
Las Vegas, NV 89131

From: **Las Vegas Local Office**
333 Las Vegas Blvd South
Suite-8112
Las Vegas, NV 89101



On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

487-2015-01184

Byron D. Williams,
Investigator

(702) 388-5095

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:



The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.



Your allegations did not involve a disability as defined by the Americans With Disabilities Act.



The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.



Your charge was not timely filed with EEOC; In other words, you waited too long after the date(s) of the alleged discrimination to file your charge.



The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.



The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.



Other (briefly state)

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed **WITHIN 90 DAYS** of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred **more than 2 years (3 years)** before you file suit may not be collectible.

On behalf of the Commission

DEC 06 2016

Enclosures(s)


Richard T. Burgamy,
Local Office Director

(Date Mailed)

cc: **Beverly Shields**
HR Director
JW MARRIOTT
221 N. Rampart Blvd.
Las Vegas, NV 89145